

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARIO MERINO,

No. C 08-3231 CW (PR)

Petitioner,

ORDER LIFTING STAY,
REOPENING CASE, AND
DIRECTING RESPONDENT TO
FILE SUPPLEMENTAL ANSWER
TO PETITIONER'S AMENDMENT
TO THE PETITION

v.

MICHAEL MARTEL, Warden,

Respondent.

(Docket no. 23)

Petitioner Mario Merino, a state prisoner, filed this pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, raising three grounds for relief. On July 15, 2008, the Court issued an Order to Show Cause why the writ should not be granted. Respondent filed an answer and Petitioner filed a traverse.

Thereafter, Petitioner moved to stay the petition on the ground that he had been informed by the Santa Clara County Office of the Public Defender that the office was reopening his case based on the state appellate court's recent decision in People v. Uribe, 162 Cal. App. 4th 1457 (2008), which held that a videotape of a victim's Sexual Assault Response Team (SART) examination was favorable defense evidence as defined under Brady v. Maryland, 373 U.S. 83 (1963), and that the prosecution's failure to produce the videotape of the SART exam constituted a Brady violation. Uribe, 162 Cal. App. 4th at 1463.

On May 6, 2010, the Court granted Petitioner's request to stay the present proceedings while he returned to state court to exhaust his Brady claim. Now, having exhausted his state remedies,

1 Petitioner has filed an amendment to the petition setting forth his
2 Brady claim and a request to lift the stay.

3 Good cause appearing, Petitioner's motion to lift the stay is
4 GRANTED. The Clerk of the Court shall REOPEN this case.

5 Because Petitioner's original three claims already have been
6 briefed by the parties, Respondent shall file with the Court and
7 serve upon Petitioner, within sixty (60) days of the issuance of
8 this Order, a supplemental answer to the amendment to the petition.
9 Respondent shall file with the supplemental answer a copy of all
10 portions of the state trial record that have been transcribed
11 previously and that are relevant to a determination of the issue
12 presented by the amendment to the petition.

13 If Petitioner wishes to respond to the answer, he shall do so
14 by filing a supplemental traverse with the Court and serving it on
15 Respondent within thirty (30) days of his receipt of the
16 supplemental answer. Otherwise, the entire petition, i.e., all of
17 Petitioner's claims, will be deemed submitted and ready for
18 decision thirty days after the date Petitioner is served with
19 Respondent's supplemental answer.

20 Petitioner is reminded that all communications with the Court,
21 whether by way of formal legal motions or informal letters, must be
22 served on Respondent by mailing a true copy of the document to
23 Respondent's counsel.

24 Extensions of time are not favored, though reasonable
25 extensions will be granted. Any motion for an extension of time
26 must be filed no later than seven (7) days prior to the deadline
27 sought to be extended.

1 The Clerk shall serve a copy of this Order and the amendment
2 to the petition (docket no. 22) and all attachments thereto upon
3 Respondent's attorney. The Clerk shall also serve a copy of this
4 Order on Petitioner at his most current address.

5 This Order terminates Docket no. 23.

6 IT IS SO ORDERED.

7 Dated: 11/3/2011



CLAUDIA WILKEN

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MARIO MERINO,

Plaintiff,

v.

WARDEN, MULE CREEK STATE PRISON et
al,

Defendant.

Case Number: CV08-03231 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 3, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Mario Merino V-54572
CTF-N.W.B.
252u
P.O. Box 705
Soledad, CA 93960-0705

Dated: November 3, 2011

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk